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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B5

DATE: FEB 22 2012 OFFICE: NEBRASKA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on May 7, 2008. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal on March 6, 2009. The petitioner then filed a motion to reopen and reconsider, which the AAO dismissed on November 9, 2009, because it did not meet the requirements of a motion at the time it was filed. The petitioner filed a second motion to reopen or reconsider, which the AAO dismissed on December 20, 2010, again because it did not meet the requirements of a motion. The petitioner has appealed the AAO's 2010 decision. The AAO will reject the appeal.

The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) under the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with two exceptions - petitions for approval of schools under § 214.3 are now the responsibility of Immigration and Customs Enforcement, and applications for S nonimmigrant status under § 214.2(t) are now the responsibility of the Fraud Detection and National Security office of U.S. Citizenship and Immigration Services (USCIS). That regulation did not give the AAO appellate jurisdiction over its own prior decisions.

In its last decision in this proceeding, on December 20, 2010, the AAO indicated that the petitioner "may file a motion to reconsider or a motion to reopen," but the AAO did not state or imply that the petitioner could appeal that decision. The USCIS regulation at 8 C.F.R. § 103.5(a) permits the petitioner to file a motion based on an AAO decision, but the petitioner filed an appeal, not a motion. There is no comparable provision to allow an appeal.

Because no statutory or regulatory provision exists to allow the petitioner to appeal an AAO decision to the AAO, the AAO must reject the appeal.

ORDER: The appeal is rejected.